

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI**

Appeal No.ST/365/2010

[Arising out of Order-in-Original No.09/2010 dt. 29.01.2010 passed by
Commissioner of Service Tax, Chennai]

Swift Shipping (Madras) Pvt. Ltd.

Appellant

Versus

Commissioner of Service Tax,
Chennai

Respondent

Appearance :

Ms. Radhika Chandrasekar, Advocate
For the Appellant

Ms. T. Usha Devi, DC (AR)
For the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of hearing / decision : 14.12.2018

FINAL ORDER No. 43174 / 2018

Per Shri Madhu Mohan Damodhar

The facts of the case are that appellants are registered as Multimodal Transport Operator (MTO) registered with the Directorate of General of Shipping, Mumbai. Pursuant to investigation, it emerged that appellants availed services of overseas agents for destuffing the cargo from the containers sent by them from India at Hub port and reshipped the cargo to the intended destinations; that all

the freight and other charges for such shipping of cargo is paid by the appellant to respective carrier; that appellant will remit the freight payable from the Hub port to the destination at a mutually agreed / pre-fixed rate to the party acting as their agent at the Hub port; that their main business is consolidation of the cargo; that they hire the containers depending upon the requirement, stuff the same with the cargo belonging to various exporters issue bill of lading; that they also pay hire charges for the container in India, hand over the container to the carrier / Liner agents; that the overseas liner agents in turn prepare a bill of lading showing M/s.Swift as the consignor and their representative / agent at Hub port as consignee; that the reverse of this is applicable for import cargo that is handled by them. On their export container loads, they are reimbursed 2% brokerage by liner agent on the freight. They have a centralized registration at Chennai and are paying service tax for all the branches in Chennai. It appeared to the department that the main activity of appellant is promoting services of various shipping lines and also managing distribution and logistics and that the services performed by appellants would be liable to classify under "Business Auxiliary Service" (BAS) under the category of services in relation to promotion and marketing of services provided by the client and under category of any incidental or auxiliary support services, classifiable under sub clauses (ii) and (vii) of Section 65 (19) for the period 01.07.2003 to 30.04.2006 and w.e.f. 01.05.2006 under the category of "Business Support Services" (BSS). Accordingly, a show cause notice dt. 23.10.2008 was issued to the appellants inter alia, proposing demand of service tax liability of Rs.1,48,85,811/- with interest thereon and imposition of penalties under various provisions of law.

Pursuant to adjudication, Commissioner vide impugned order No.09/2010 dt. 29.01.2010 confirmed the demands proposed in the SCN with interest and also imposition of penalty of Rs.1,50,00,000/- under Section 78 of the Act. Hence this appeal.

2. When the matter came up for hearing, Ld. Advocate Ms. Radika Chandrasekar submits that the issue is no longer *res integra* and has been consistently held by the Tribunal that services provided by a Multimodal Transport Operator cannot be identified as a taxable service under any taxing entry under Section 65 (105) *ibid.* Ld. Advocate relies upon case laws of *Greenwich Meridian Logistics (I) Pvt. Ltd. Vs CST Mumbai - 2013 (43) STR 215 (Mumbai)*. Ld. Advocate also points out that the SCN proposed a demand of service liability under the category of BAS upto 30.4.2006 and thereafter under the category of BSS. She submits that proposal to classify identical activity under two different taxable service is not sustainable. She relies upon the judgment of the Hon'ble Apex Court in the case of *CCE Bangalore Vs Brindavan Beverages (P) Ltd. - 2007-TIOL-118-SC-CX*. Ld. Advocate submits that SCN is also barred by limitation. SCN was issued on 23.10.2008 whereas the appellants had entered into various communications on the issue with the department on 11.2.1998, 26.3.1998, 13.10.2000, 23.11.2000, 25.10.2007 etc.

3. On the other hand, Ld. A.R Ms. T. Usha Devi reiterates the impugned order.

4. Heard both sides. We find that the Ld. Advocate is correct in her assertion that the issue concerning taxability of services performed by Multimodal Transport Operator has been laid to rest by the Tribunal in *Greenwich Meridian*

Logistics (supra) relied upon by her. The relevant portion of the said Tribunal's order is reproduced as under :

“12. The appellant takes responsibility for safety of goods and issues a document of title which is a multi-modal bill of lading and commits to delivery at the consignee's end. To ensure such safe delivery, appellant contracts with carriers, by land, sea or air, without diluting its contractual responsibility to the consignor. Such contracting does not involve a transaction between the shipper and the carrier and the shipper is not privy to the minutiae of such contract for carriage. The appellant often, even in the absence of shippers, contract for space or slots in vessels in anticipation of demand and as a distinct business activity. Such a contract forecloses the allotment of such space by the shipping line or steamer agent with the risk of non-usage of the procured space devolving on the appellant. By no stretch is this assumption of risk within the scope of agency function. *Ergo*, it is nothing but a principal-to-principal transaction and the freight charges are consideration for space procured from shipping line. Correspondingly, allotment of procured space to shippers at negotiated rates within the total consideration in a multi-modal transportation contract with a consignor is another distinct principal-to-principal transaction. We, therefore, find that freight is paid to the shipping line and freight is collected from client-shippers in two independent transactions.”

4.2. We further find that even as far back as 11.02.1998 , the department had information from the appellants with regard to their activity which was in turn replied and conveyed vide appellant's letter dt. Nil and 26.3.1998 . Further, subsequently appellants have also vide a letter dt. 13.10.2000 requested for clarification for payment of service tax as MTO. In response, the department vide their letter dt.23.11.2000 conveyed that MTO is exempt from liable to service tax. Even thereafter the appellants had preferred a letter dt. 25.7.2007 enclosing a note of the activities carried out by their company and in the income streams. By no account, can the department make an allegation that the activities of the appellants had been suppressed by them. This being so, the delayed issue of the

SCN only on 23.10.2008 for the period 01.07.2003 onwards, extending the period of limitation is certainly not sustainable since there are no ingredients present to justify such invocation and will require to be set aside, which we hereby do.

5. In the event, the appellant is found to succeed on both on merits as well as on limitation.

6. Appeal is allowed with consequential benefits, if any, as per law.

(operative part of the order pronounced in court)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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